

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

DELTEL, INC.)

DOCKET NO. 2006-0473

For a Certificate of Authority to)
Operate as a Reseller of)
Telecommunications Services Within)
the State of Hawaii.)

DECISION AND ORDER NO. 23306

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Filed March 15, 2007

At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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DECISION AND ORDER

By this Decision and Order, the commission grants DELTEL, INC. ("Applicant") a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") on a resold basis, subject to certain regulatory requirements.

I.

Background

Applicant is a California corporation authorized to transact business within the State as a foreign corporation. Applicant is authorized to provide: (1) domestic interstate and international telecommunications services in forty-seven states and the District of Columbia; and (2) intrastate telecommunications services on a resold basis in forty-seven states and the District of Columbia, and has requests for authority currently pending with the three remaining states, including Hawaii.

A.

Applicant's Request

On December 8, 2006, Applicant filed an application seeking a COA to provide telecommunications services on a resold basis throughout the State.¹ Applicant represents that it is: (1) financially fit and has access to the capital needed to fulfill any obligations it may undertake with respect to its offering of telecommunications services within the State; and (2) "fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the Commission."² Applicant maintains that granting it a COA will further the public interest by expanding the availability of competitive intrastate telecommunications services, and will provide customers with access to new technologies and service choices.

Applicant makes its request for a COA pursuant to HAR §§ 6-80-17 and 6-80-18. Applicant also requests that its books and records be kept in the State of California, subject to Applicant making such information available to the commission.

¹Application; Verification; Exhibits A - D; and Certificate of Service, filed on December 8, 2006. On January 22, 2007, Applicant updated its application with three exhibits, including copies of its most recent financial statement, submitted in response to the commission's directive. The initial Application and the updated information are collectively referred to as the "Application."

Applicant served copies of its Application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

²Application, at 4.

B.

Consumer Advocate's Statement of Position

On January 9, 2007, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to Applicant's COA request.³ The Consumer Advocate conditions its position on Applicant: (1) modifying its tariff in accordance with the Consumer Advocate's recommendations set forth in Section II.E of its Statement of Position;⁴ and (2) submitting a copy of its most recent financial statements as required under HAR § 6-80-17(c)(1)(E).⁵

Moreover, the Consumer Advocate recommends that the commission, on its own motion, grant the following waivers to be consistent with previous decisions and orders (collectively, "Waiver Recommendations"):

1. Waive the requirement that a telecommunications carrier maintains its financial records in conformance with the uniform system of accounts, and instead, allowing the carrier to maintain its financial records in accordance with generally accepted accounting principles (HRS § 269-8.5).

³Consumer Advocate's Statement of Position; and Certificate of Service, filed on January 9, 2007 ("Statement of Position").

⁴As part of its updated information filed with the commission on January 23, 2007, Applicant submitted revised tariff sheets that incorporate the tariff modifications proposed by the Consumer Advocate.

⁵On January 23, 2007, Applicant submitted copies of its most recent financial statement, in response to the commission's directive.

2. Waive the requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in Hawaii, and instead, allowing the carrier to promptly provide copies of its out-of-state records and books upon the commission's request (HRS § 269-8.2).
3. Waive the requirement subjecting telecommunications carriers to rate of return regulation and public and contested case hearings on proposed rate increases, except that this waiver will not apply to basic service in high cost areas provided by carriers receiving state or federal universal service fund subsidy or to non-competitive services (HRS § 269-16).

The Consumer Advocate contends that granting such waivers will be consistent with HAR § 6-80-136. Accordingly, consistent thereto, Applicant should be required to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make its records and books pertaining to its intrastate telecommunications operations in the State available upon the requests of the commission and the Consumer Advocate; and (4) comply with other exception requirements set forth in the subject rule that are not waived.

II.

Discussion

A.

COA

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a

certificate of public convenience and necessity ("CPCN") from the commission.⁶ HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

Upon review of the Application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by its authorization to provide telecommunications services on a nationwide basis, the findings noted by the Consumer Advocate that Applicant has the managerial and technical abilities to provide the proposed

⁶On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

telecommunications within the State,⁷ and the most recent financial statement submitted in support of the Application.

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations and the documents submitted in support of its claims. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional service providers in the State's telecommunications

⁷In this regard, the Consumer Advocate states in respective part:

. . . The Consumer Advocate notes that Applicant did not include any qualifications of its management capabilities in the instant filing. In its investigation, however, the Consumer Advocate discovered testimony by Robert G. Huff, DELTEL's Vice President of Operations in Public Service Commission of South Carolina's Docket No. 2004-358-C asserting that DELTEL has sufficient managerial resources and the ability to provide proposed telecommunications services similar to those in the instant proceeding. The proposed order for the same Docket No. 2004-358-C notes that Mr. Huff's testimony revealed that members of DELTEL's management team have extensive experience in marketing and communications. In view of the above, the Consumer Advocate will view Applicant as having the managerial and technical abilities to provide the proposed services in Hawaii.

Consumer Advocate's Statement of Position, at 3 - 4.

market increase competition and provide consumers with added options to meet their needs. As noted by the Consumer Advocate, "[t]he introduction of effective competition in the telecommunications industry is desirable to achieve the benefits that would not be present in a monopolistic environment. As such, the entry of additional service providers should further the goal of effective competition in Hawaii's telecommunications market."⁸

Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate telecommunications services in the State as described in its Application.

B.

Consumer Advocate's Recommendations

The Consumer Advocate recommends that the commission, on its motion, waive certain statutory requirements. However, as noted by the Consumer Advocate, its Waiver Recommendations are consistent with the provisions of HAR § 6-80-136,⁹ and, as such, the commission notes that the rule already waives, for Applicant, the requirements that the Consumer Advocate recommends that the commission waive. Specifically, HAR § 6-80-136 states, in relevant part:

Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate

⁸Consumer Advocate's Statement of Position, at 5.

⁹Id. at 6.

telecommunications services by telecommunications carriers other than the incumbent carrier are waived

HAR § 6-80-136 (emphasis added).

Applicant is a carrier offering to provide resold telecommunications services on a competitive basis in the State, and Applicant is a competitive local exchange carrier and not an incumbent carrier. Waiver of the requirements articulated by the Consumer Advocate are consistent with and contemplated fully under HAR § 6-80-136. As set forth in the rule, specific authorization or waiver of these requirements is not necessary. Moreover, the grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity with the terms, conditions, and rules prescribed or adopted by the commission, which include all provisions of HAR § 6-80-136.¹⁰

Related to its Waiver Recommendations, the Consumer Advocate also recommends that the commission require Applicant to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) make information from its records and books pertaining to intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon request on a timely basis; and (4) comply with the other exception requirements set forth in the subject rule that are not waived. The first two recommendations are already incorporated in HAR § 6-80-136.

¹⁰This position is consistent with past commission decisions. See In re NECC Telecom, Inc., Docket No. 05-0248, Decision and Order No. 22461, filed on May 10, 2006, at 6 - 7.

The third recommendation basically modifies the current language of HAR § 6-80-136(3) to require Applicant to provide copies of its records and books upon the Consumer Advocate's request, in addition to the commission's request. The commission determines that because the Consumer Advocate has several discovery mechanisms available to it, an order specifically allowing the Consumer Advocate to request copies of Applicant's records and books in conjunction with the waiver provisions of HAR § 6-80-136 is not warranted at this time. With respect to the Consumer Advocate's fourth recommendation, because this requirement would exist regardless of a commission order containing such an instruction, the commission determines that a commission order on this issue is unnecessary.

C.

Tariff Revisions

As part of the updated information filed with the commission on January 23, 2007, Applicant submitted revised tariff sheets that incorporate the tariff modifications proposed by the Consumer Advocate. The commission finds reasonable the modifications reflected in the revised tariff sheets.

Moreover, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes that Applicant's proposed tariff, Hawaii PUC Tariff No. 1, should also be revised as follows:

1. Original Sheet 10, Section 2.1 vs. Original Sheet 16, Sections 2.8 and 2.8.1 - Section 2.1

authorizes Applicant to require a customer deposit prior to accepting the service order, and if service is denied, the customer's deposit will be returned immediately. By contrast, Sections 2.8 and 2.8.1 state that Applicant "does not require deposits to commence service." Applicant should clarify this apparent inconsistency, and if customer deposits are required, the minimum requirements of HAR § 6-80-105, governing customer deposits, should be incorporated therein.

2. Original Sheet 15, Section 2.6 - Include language that incorporates HAR § 6-80-103(b), which states that "[i]f service is interrupted by a natural or other disaster beyond the control of the telecommunications carrier, the carrier shall make adjustments and refunds to its affected customers if service is not restored within forty-eight hours."
3. Original Sheet 24, Section 4.4.1 - Replace "not" with "no" to correct an inadvertent error.

III.

Orders

1. Applicant is granted a COA to provide intrastate telecommunications services in the State on a resold basis, as described in its Application.

2. As the holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant shall file its proposed tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

4. Applicant shall conform its initial tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions set forth in Section II.C of this Decision and Order, as applicable. An original and eight (8) copies of Applicant's revised initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariff.

5. Within thirty (30) days from the date of this Decision and Order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street, Room #103, Honolulu, HI, 96813.

6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications

relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 22536, filed on June 16, 2006, in Docket No. 2006-0126. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,¹¹ 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAR 15 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

2006-0473.sl

¹¹Solix, Inc. was formerly known as NECA Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23306 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: MAR 15 2007